

REMARKS

The Official Action of July 9, 2007, and the prior art cited and relied upon therein have been carefully studied. The claims in the application are now claims 11, 12, 14-19, 21 and 22, claims 13 and 20 having been deleted and incorporated into claim 11 as amended above. Applicants submit that their claims define novel and unobvious subject matter and should be allowed. Favorable reconsideration and allowance are respectfully urged.

Acknowledgement by the PTO of the receipt of applicants' papers filed under §119 is noted.

Claims 11-13 and 17 have been provisionally rejected on the basis of non-statutory double patenting over claims 1, 3, 4 and 20 of co-pending application 10/525,395. This rejection is respectfully traversed.

First, as the rejection is only provisional, applicants submit that it is premature, because there can be no double patenting until the claims of the co-pending application have been patented.

Nevertheless, that is not applicants' main argument, which instead is that the present claims would not have been obvious from any of the claims of the co-pending application. Thus, the features of claim 20 have now been incorporated into

claim 11. Claim 20 was not rejected on the basis of obviousness-type double patenting, and therefore the rejection does not apply to claim 11 as so amended.

Moreover, none of claims 1, 3, 4 or 20 of the co-pending application calls for the feature from claim 20 which has now been incorporated into claim 11, and there is nothing in the claims of the co-pending application which would have made it obvious to do so.

Withdrawal of the rejection is in order and is respectfully requested.

Claims 6 has been rejected under the second paragraph of §112. Claim 16 has accordingly now been appropriately corrected.

Claims 19 and 20 have been objected to as being in improper form. Applicants agree as regards claim 20 (now cancelled and incorporated into claim 11), but **respectfully disagree** with respect to claim 19. Accordingly, the rejection is respectfully traversed as regards claim 19.

At the time of the rejection, the only multiply dependent claims in the application were claims 19 and 20. Claim 20 was improperly multi-dependent because it depended from multiply dependent claim 19. **However, claim 19 was proper, as it was multiply dependent only from claim 11 and**

**singly dependent claims, all alternatively.** Accordingly, claim 19 was in proper form and should have received an examination.

Applicants now request that claim 19 be given a first examination on the merits.

Claims 11, 12, 16 and 17 have been rejected under §102 as anticipated by Souma et al USP 5,213,618 (Souma).

While this rejection is respectfully traversed, applicants need not address it at the present time in view of the incorporation of claim 20 into claim 11, it being noted that claim 20 was not rejected as anticipated by Souma.

Claims 11-13 and 17 have been rejected under §102 as anticipated by Takahashi published application 2003/0051634 (Takahashi).

Again, while the rejection is respectfully traversed, applicants need not address it at the present time in view of the fact that the rejection did not include claim 20, and claim 20 has now been incorporated into claim 11.

For the record, applicants note the Takahashi discloses flaky pigment, preferably a metal pigment, coated with silicon dioxide by a sol gel method. As understood, a metal oxide film is provided over the silicon oxide film.

Importantly, applicants do not see that Takahashi discloses, as called for in main claim 11, the provision of silica particles having an average diameter of less than 100nm. This is an important aspect of the present invention to provide a sufficiently smooth preparation. See applicants' specification at page 5, third paragraph:

In order to achieve that the preparation feels smooth in its application, it is necessary that the flake-shaped pigments have a large ratio of diameter to thickness (aspect ratio) and only minor surface roughness. This was achieved according to the invention in such a way that the silica particles that form the encapsulation have an average diameter of < 100 nm. It is particularly advantageous if these particles are so fine that they exceed the limits of resolution even viewed under a scanning electron microscope.

The use of silica particles of such a small size is not disclosed by Takahashi.

Claim 11 has been rejected under §102 as anticipated by Reisser et al USP 5,931,996 (Reisser).

Again, claim 20 has not been included in this rejection, nor has claim 13, both of these previously dependent claims now being incorporated into main claim 11. Thus, applicants need not address this rejection at the present time.

Claim 11 has also been rejected under §102 as anticipated by Nadkarni USP 5,261,955.

Again, applicants need not address this rejection at the present time for the same reasons pointed out immediately above with respect to the rejection based on Reisser.

Claim 18 has been rejected under §103 as obvious from Souma in view of JP 55004358 (JP '358). As with the other rejections noted above, applicants need not address this rejection in view of the incorporation of claims 13 and 20 into main claim 11.

To briefly summarize, the feature set forth in the dependent part of previous claim 20 was not addressed in the Office Action. Applicants' review of the prior art does not reveal that this feature is shown or made obvious by any of the applied references. The feature in question requires that the silica coating particles have an average diameter of less than 100nm, and this is very helpful for cosmetic purposes because it ensures obtaining a very smooth feeling in applying cosmetics to the skin.

New claims 21 and 22 are patentable because they depend from and incorporate the features of claim 11, which is patentable for the reasons given above. These two claims are based on the features deleted from claim 16.

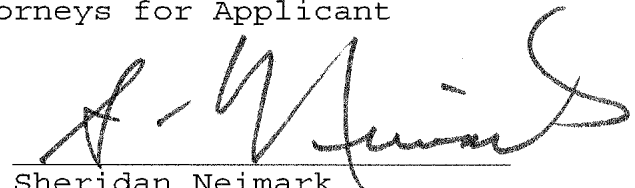
The prior art documents made of record and not relied upon by the PTO have been noted, along with the implication that such documents are deemed by the PTO to be insufficiently material to warrant their application against any of applicants' claims.

Applicants believe that all issues raised in the Official Action have been addressed above in a manner that should lead to patentability of the present application. Favorable consideration and early formal allowance are respectfully requested.

Respectfully submitted,

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